Supreme Court, U.S.
FILED
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92-424

NO._____

IN THE
Supreme Court of the United States

OCTOBER TERM
1992

EDWIN F REILLY
Petitioner

v.

INTERNAL REVENUE SERVICE

PETITION FOR WRIT OF CERTIORARI
TO THE
UNITED STATES SUPREME COURT
FOR THE THIRD CIRCUIT
PETITION FOR WRIT OF CERTIORARI

EDWIN F. REILLY
Counsel for Petitioner
In propria persona

ADDRESS

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QUESTIONS PRESENTED

1. Does the appellate Court's endorcement of the lower court's taking subject matter jurisdiction of an non existance trust res and failing to remand petitioners Complaint for Declaratory Judgment back to the state court entitle petitioner to be placed under the protection of this court?

2. Does petitioner have the right to expatriate from being a fiducary/beneficary in an ecclesiastical trust as a U.S. citizen, in the "several states" of the union under Erie Railroad v Thompkins 304 U.S. 64; to become a permanent citizen of the soil in Pennsylvania as a "state in this union" under Swift v Tyson 16 Peters 1 that operates outside the jurisdiction of the federal courts?

EVIDENCE

3. Does the Third Circuit's refusal to recite bases (authorities) for its rejection of petitioners statute law and evidence of petitioners "Declaration" (filed in support of his challange to subject matter jurisdiction), deny petitioner access to courts exercising "judicial Power" of his home state as a permanent citizen in Pennsylvania.

List Of The Parties

THE PARTIES ARE:

Edwin F. Reilly ,
Petitioner

Internal Revenue Service,
Respondents

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Hanson v Denckla (1958) 357 US 235, 8

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CONSTITUTION OF UNITED STATES

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U.S. COURT OF APPEALS-Third Circuit

Reilly v Internal Revenue Service

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Appeal Filed June 26, 1992. A1, A2

U. S. DISTRICT COURT - PITTSUBUGH

Reilly v Internal Revenue Service

U.S.D.C. MEMORANDUM ORDER

Dismissing Reilly's State Action

Filed January 7, 1991 A3, A4

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NO._____

IN THE SUPREME COURT OF THE UNITED STATES

EDWIN F. REILLY

PETITIONER

V

INTERNAL REVENUE SERVICE

RESPONDENTS

PETITION FOR WRIT OF CERTIORARI

TO THE

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

PETITIONER, Edwin F. Reilly , respectfully prays that a Writ of Certiorari issue to review the Judgment Memorandum of the U.S. Court of Appeals for the Third Circuit, to overturn the lower court's issuing of Judgment in favor of Appellees except where Court denied Appellees motion for sanctions against appellant.

OPINIONS BELOW

The U.S. Court of Appeals JUDGMENT ORDER filed, June 26, 1992 appears in Appendix A1.

The MEMORANDUM ORDER of the district court appears at A2.

The Court of Appeals' Memorandum in this matter was tried, on May 8, 1992. The appellate court denied appellant's motion to dismiss for lack of subject matter jurisdiction based on issues of law and fact as set forth in A-1.

This Court's jurisdiction is invoked under 28 U.S.C. 1254 (1).

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

The statutory provisions primarily at issue here are initially, 15 United States Statute at Large, Ch. 249-250, pps Pages 223-224, Section 1 July 27, 1868 to wit:

> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any declaration, instruction, opinion, order, or decision of any officers of this government which denies, restricts, impairs, or questions the right of expatriation, is hereby declared inconsistent with the fundamental principles of this government.

Article I—Legislative Department of the 74th Congress 2d Session, in Document 232 Senate (1938). to Wit:

Right of Expatriation

The Constitution is silent of this subject, but from the very first there was recognized the right of a citizen to expatriate himself, under certain conditions and subject to proof. In Talbot v Janson[1] a decision on the exact point was avoided by the facts of the case where the act of leaving the country was in pursuance of a criminal purpose and not to be construed into an act of emigration), but it was indicated that in absence of a statute governing the subject, an expatriation must be bona fide, the cause of removal be lawful, the departure be entire, with intent to leave the country and settle in another. The absence of a Federal statute—there being no constitutional prohibition in the way—was commented upon, Justice Iredell stating (p.164) "it not only is a proper instance in which [the legislative power] may be exercised, but is the duty of the Legislature to make such provision." It was, however, 1868, before Congress expressly recognized the right of expatriation and declared that any restrictions thereon were inconsistent with the fundamental principles of the Republic (R. S. 1999; U. S. C. 8: 15).

H.J.R. 192 June 5, 1933 (48 Stat 113) to wit:

Joint resolution to assure uniform value to the coins and currencies of the United States.

Whereas the holding of or dealing in gold affect the public interest, and are therefore subject to proper regulation and restriction; and

Whereas the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, obstruct

---

[1]3 Dall. 133 [1795]. See also Murray v The "Charming Betsey", 2 Cr. 64 [1804]; The "Venus", 8 Cr. 253 [1814]; The "Santissima Trinidad", 7 Wheat. 283 [1822]; Inglis v Sailor's Snug Harbor, 3 Pet 99 [1830]; Shanks v Dupont, 3 Pet. 242 [1830]; Comitis v Parkerson, 56 Fed. 556 [1893]; M'Ilvaine v Coxe, 4 Cr. 209 [1808]. 28 U.S.C. 1441 (a) (b), P.L.100-702

the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts. Now, therefore, be it.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

(b) As used in this resolution, the term "obligation" means an obligation (including every obligation of and to the United States, excepting currency) payable on money of the United States; and the term "coin or currency" means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations.

Sec. 2. The last sentence of paragraph (1) of subsection (b) of section 43 of the Act entitled "An Act to relieve the existing national economic emergency by increasing agriculture purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agriculture indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes ", approved May 12, 1933, is amended to read as follows:

"All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and sues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion of their actual weight."

Approved, June 5, 1933, 4.40 p.m.

CONSTITUTION OF UNITED STATES

Article III Section 3, ...no Attainder of Treason shall work Corruption of Blood, of Forfeiture except during the Life of the Person attainted.

Article IV Sect 4, Section 4. The United States shall guarantee to every State in this Union a Republican Form of Government.

Amendment 1, Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.

Amendment 10, The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Amendment 14, "and subject to the jurisdiction thereof."

PENNSYLVANIA STATUTES

Title 20 Pennsylvania Consolidated Statutes, Chap. 61, supra, 6103. Release or disclaimer of powers or interests:

(a) Powers and interests releasable.-Any power of appointment, or power of consumption, whether general or special, other than a power

in trust which is imperative, and any interest in, to, or over real or personal property held or owned outright, or in trust, or in any other manner which is reserved or given to any person by deed, will or otherwise, and irrespective or any limitation of such power or interest by virtue of any restriction in the nature of a so-called spendthrift trust provision, or similar provision, may be released or disclaimed, either with or without consideration by written instrument signed by the person possessing the power of the interest and delivered as hereinafter provided, but nothing in this section shall authorize an income beneficiary of a spendthrift trust to release or disclaim his right to such income, unless as a result of the release or disclaimer the released or disclaimed income will pass to tone or more of the beneficiary's descendants.

(b) Form of release or disclaimer.-A power or interest which is releasable or disclaimable may be released or disclaimed either absolutely or conditionally, and may also be released or disclaimed with respect to the whole or any part of the property subject to such power or interest, and may also be released or disclaimed in such manner as to reduce or limit such power or interest would otherwise be exercisable. No release or disclaimer or a power or of an interest shall be deemed to make imperative a power or interest which was not imperative prior to such release or disclaimer unless the instrument of release or disclaimer expressly so provides.

Title 20 Pennsylvania Consolidated Statutes, Chap. 61 supra, Section 6102. Termination of trusts:

(c) Nothing in this section shall limit any power of the court to terminate or reform a trust under existing law.

Title 20 Pennsylvania Consolidated Statutes, supra Chap. 57, 5703. Distribution of property of absentee:

Upon the entry of a decree establishing the death of a person domiciled in the Commonwealth, based in whole or in part upon his absence from his place of residence, the real and personal property of the absentee shall be administered by his personal representative as in the case of other decedents. However, the personal

representative shall make no distribution of such property to the persons entitled thereto by will or by intestacy, nor shall such persons acquire indefeasible title thereto, except under decree of court. The court, in awarding distribution, shall require that a refunding bond, with or without security and in such form and amount as the court shall direct, shall be executed by each distributee and filed with the clerk. The bond shall be conditioned that, if it shall later be established that the absentee was in fact alive at the time of distribution, the distributee upon demand will return the property received by him or, if it has been disposed of, will make such restitution thereof as the court shall deem equitable. Should a distributee not execute the bond, the court shall appoint a trustee to receive and hold his share until further order of the court.

STATEMENT OF THE CASE

This petition resulted from an original action that started in the Court of Common Pleas of Blair County Pennsylvania when then plaintiff (Reilly) instituted a Complaint for Declaratory Judgment against the Internal Revenue Service so as to settle a conflict that has been in progress between Reilly and the IRS for placing liens on Reilly's real property and levies upon his wages despite the fact that there is no fiduciary nexus between petitioner and respondents. Reilly maintains that he is not subject to the 14th amendment trust and Erie Railroad v Tompkins 304 U.S. 64 and its political law of commerce. This is because Reilly had published in the local newspaper his "Declaration" of expatriation from being a fiduciary/beneficiary as a U.S. citizen.

That Reilly as a permanent citizen of the soil in Pennsylvania is subject to Swift v Tyson 16 Peters 1, and its civil law of commerce outside the jurisdiction of the federal courts. In addition to Swift v Tyson supra, Reilly bases his expatriation argument on `Right of Expatriation from Article I—Legislative Department of the 74th Congress 2d Session, in Document 232 Senate (1938); Article III Sec.3, Article IV Section 4, and Amendment I, 9, and 10 of the U.S. Constitution; Hepburn v Ellzey 2 Cranch 445, 452-453, U.S. (1805); Pennoyer v Neff 95 US at 720; U.S.C.A. Const. Amend. 14. Hanson v Denckla (1958) 357 US 235; 78 S. Ct. 1223; 2 L Ed 2d 1283; reh den 358 US 858; 3 L Ed 2d 92; 79 S. Ct. 10. Title 20 Pa. C.S. 6103 (a), (b) and (c). 5703.

The IRS had the suit removed to the federal district court upon which Reilly challenged the subject matter jurisdiction upon removal. Reilly's argument upon removal was based on the fact that he expatriated from the United States and is a non 14th amendment citizen not subject to the IRS and its' taxing policy, Erie Railroad v Tompkins supra, and the Federal Rules on Removal.

Additionally Reilly's argument evolves around the fact that he has the right to resurrect his true estate from the religious trust of the living dead that H.J.R. 192 supra, created, which the U.S. Supreme Court Stated in Funk v United States 290 U.S. 371 (1933) is mutable at will.

The Honorable Judge Smith of the U.S. District Court in his opinion dated January 7, 1992, stated that Reilly sought a refund of federal taxes and has not followed statutory prerequisites for maintaining a lawsuit for a refund of taxes and that the anti-injunction act barred relief in addition to being legally meritless. For Judge Smith to make such a statement ignores all the law and facts surrounding the issue that was presented to him; that a person cannot be compelled to accept a private boon or to be made a subject to a foreign religious power that the U.S. Constitution protects against. Reilly removed the trust res and severed the private law for public purposes that operates quasi in rem under Erie Railroad v Tompkins supra, in the "several states" in the union; returned to Pennsylvania where he is permanently domiciled; thus not subject to the laws of descent and distribution that emanates from the several states of the United States. The federal court was without jurisdiction to probate the estate of Reilly because the federal district courts lack statutory jurisdiction to probate the estate of a state citizen. Furthermore, the federal court took a "case" in rem dealing with property and converted said case to a "controversy" quasi in rem. The federal courts have no substantive in rem rights over state citizens to effectuate the removal action in question.

Nowhere in his opinion does the Honorable Judge Smith address the issues of statute law and court decisions that was presented which would

have proven that his ruling quasi in rem was in error. Judge Smith by invoking the acts of the Congress again subjected Reilly to a foreign jurisdiction, i.e., private law for public purposes operating quasi in rem that is reflected in Erie Railroad v Tompkins supra, and the Federal Rules on Removal. Basically what Judge Smith did was to probate Reilly's estate, then made a determination that Reilly was a descendent, with no property rights in rem, then expatriated Reilly's estate from his permanent domicile in Pennsylvania as a "state in this union" in public law for private purposes, into the private religious trust of foreign law for public purposes created by the 14th amendment, H.J.R. 192 supra and Erie Railroad v Tompkins supra. This despite the fact that Funk v United States supra, was pleaded in the Challenge to Subject Matter Jurisdiction on Removal. Even in his duty as a legislative court, he violated Article I—Legislative Department of the 74th Congress 2d Session, in Document 232 Senate (1938) supra.

I appears that by the Honorable Judge Smith taking jurisdiction, he moved Title 20 Pa. C.S. 6103 (a), (b) and 6102 (c), 5703 and the case law that evolved around those statutes such as Cunnius v Reading School District 198 U.S. 458, 25 Sup.Ct. 721, 49 L. Ed. 1125, 3 Ann Cas 1121 (1905). Which is a Pennsylvania case. Scott v McNeal, 154 U. S. 34, 14 Sup.Ct. 1108, 38 L. Ed. 896 (1894) into new fields. These cases deal with presumed decedents which states that the probate of a living person is null

and void. Judge Smith in this case is treating the petitioner as though the petitioner is dead in the law or a 'person in being', thus subject to the religious public trust and Erie Railroad v Tompkins supra.

PETITIONERS APPEAL TO THE THIRD CIRCUIT

On January 28,1992, petitioner filed his Notice of Appeal. Reilly's brief argued the following issues of law on Appeal: 15 United States Statute at Large Sec. 1; Title 8 U.S.C. Sec. 1481; Article III Section 3, Article IV Sect 4, Amendment 1, Amendment 10, Amendment 14, to the Constitution of United States; H.J.R. 192.; Title 20 Pa. C. S. 6103 (a), (b), 6102 (c). Article I Section 1, 2, 8 and section 10 to the Constitution of Pennsylvania.

June 26,1992 the Third Circuit issued its Judgment Order affirming the lower court's judgment without any explanation except that the Court denied the IRS's motion for sanctions. The court failed to address the issues of statute law presented and again the court treated appellant as though he was dead in Law. Appellant Reilly herewith files this petition for Writ of Certiorari to the Third Circuit Court of Appeals.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted to correct the obvious violations of law against petitioner by the lower courts. The lower courts' total disregard for

serious analysis of the violations of law, and the appellate courts' refusal not only to respect the guaranteed rights of minority appellant who is a permanent citizen of Pennsylvania; thus not primarily a citizen of United States subject to the 14th amendment trust and its Erie Railroad v Tompkins decision supra; with its limited liability for the payment of debts in its political commercial jurisdiction at law and general equity. This calls not only for intercession by this court, but for its protection of the rights of petitioner under Swift v Tyson supra and its civil commercial jurisdiction.

UNITED STATES CODES INVOKED BY THE DISTRICT COURT

The district court refused to accept the Challenge to Subject Matter Jurisdiction on Removal by petitioner thus invoking 26 U.S.C. @7422, 7421 (a); Enoch's v Williams Packing & Navigation Co. 370 U.S. 1 (1962) to affect taking jurisdiction of the case.

QUESTIONS PRESENTED-EVIDENCE

Petitioner proved with his evidence and the law surrounding the facts that petitioner is not subject to a foreign power i.e., private law for public purposes that operates quasi in rem.

CONCLUSION

Petitioner submits that this Court should grant certiorari here to rule, explicitly, on the lower courts' moving Reilly's Complaint for Declaratory Judgment and Probate of his estate from the court of chancellery in the common law of Pennsylvania as a "state in this union" under Article IV Section 4; to the general equity of the English court of chancellery of the original Judiciary Act of 1789. This general equity operating under Article I of the "several States" in the union via Erie Railroad v Tompkins supra. Therefore, the said removal action is unconstitutional and void. For these reasons, and all the reasons set forth above, a writ of certiorari to the Third Circuit Court of Appeals should issue to review the Judgment Order of the court of Appeals in this matter. If this Court elects not to address the issues presented in this Petition at this time, petitioner requests that the Writ issue and that the matter be remanded to the Court of Appeals for the Third Circuit for redetermination in light of the lower court's disregard of petitioner's evidence and law filed in support-proof of his claims.

Respectfully submitted,

Edwin F. Reilly

Edwin F. Reilly,
Petitioner

DATED: 8/28/92

A1

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 92-3064

EDWIN F. REILLY
APPELLANT

V

INTERNAL REVENUE SERVICE

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Civil No. 91-255J
District Judge: Hon. D. Brooks Smith

Submitted Under Third Circuit Rule 12(6)
April 29, 1992

Before: STAPLETON, SCIRICA
HIGGINBOTHAM, Circuit Judges

JUDGMENT ORDER

AFTER consideration of all contentions raised by appellant, it is

ORDERED AND ADJUDGED that:

1. The judgment of the district court be and is hereby affirmed.

2. The motion for sanctions is denied.

By the Court

s/_____
Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

EDWIN F. REILLY
Plaintiff

Civil Action No. 91-255J

vs

INTERNAL REVENUE SERVICE
Defendant

MEMORANDUM ORDER

SMITH, DISTRICT J.

Plaintiff Edwin F. Reilly filed a complaint in the Blair County Court of Common Pleas which sought a refund of federal income and withholding taxes collected by the defendant Internal Revenue Services. The IRS removed the matter to this Court and moved to dismiss the action, asserting inter alia that the plaintiff has failed to follow the statutory prerequisites for maintaining a lawsuit for a refund, see 26 U.S.C. @7422, and that the complaint to the extent it sought injunctive relief was barred by the tax anti-injunction act, 26 U.S.C. @7421 (a).

Plaintiff does not allege that he has complied with the statutory prequisities to filing a complaint for refund.

Nor does plaintiff's complaint[1] state facts which would bring this matter within the narrow exceptions to the tax anti-injunction act. See Enochs v Williams Packing & Navigation Co. 370 U.S. 1 (1962).

The complaint is dismissed. The clerk shall mark this matter CLOSED.

DATE: JANUARY 7, 1992

BY THE COURT

s/_____
D. Brooks Smith
United States District Judge

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[1] . Plaintiff's complaint is legally meritless. Like previous actions filed by this plaintiff, it appears to rest on a purported claim of independence from the United States, see Complaint, Exhibit "B", attached to the Notice of Removal, and the resulting belief that the IRS in enforcing the Internal Revenue Code is acting as an agent of the foreign municipal corporation of the District of Columbia. See Complaint, Paragraph II and prayer for relief, attached to Notice of Removal; see also Motion to Challenge Subject Matter Jurisdiction on Removal.

A5

DECLARATION OF INDEPENDENCE

I, Edwin F. Reilly in the name of the Almighty Creator, the Declaration of Independence, the Original Constitution of the United States of America, solemnly Publish and Declare of Right, to be Free and Independent from the Incorporated Democracy of the District of Columbia and all Political connection with the incorporated Democracy of the District of Columbia is hereby totally dissolved.

I, Edwin F. Reilly have full power to Contract, establish Commerce, and to do all Acts and Things which independent Sovereign Individuals have a right to do. And for support of this, Declaration with a firm reliance on the protection of the supreme laws of the United States of America, Edwin F. Reilly pledges my life, Fortune and Sacred Honor to the Cause of preserving and defending all principles of the Declaration of Independence, the Original Constitution of the United States of America and the first 10 Amendments of the Bill of Rights of our Great Republic.

So done on this 12th day of June, 1989, signed, Edwin F. Reilly
Edwin F. Reilly 416 Lotz Ave.
Altoona, PA. 16602
Sworn and subscribed before me this 12th day of June 1989.
Elizabeth A. Albright,

Notarial Seal
Elizabeth A. Albright,
Notary Public

Hollidaysburg Boro.
Blair County
My Commission Expires
May 10, 1992

A copy of the above Declaration of Independence was published in the Altoona Mirror Newspaper in Altoona, Pennsylvania on June 14, 1989.